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EX PARTE OR LATE FILED

Friday, May 28, 1999

Mr. William E. Kennard, Chairman
FEDERAL COMMUNICATIONS COMMISSION
445 12th St. S.W.
Room TWB 204
Washington DC, WDC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Proposed Rule regarding low power stations for community organizations

Dear Mr. Kennard

Enclosed please find the recent article in the San Diego Union Tribune regarding your office. I strongly urge the FCC to adopt the proposed rule expanding the availability of frequencies for school, church and community organizations to enable them to cover areas of up to ten miles from the point of broadcast.

I would like to appear and testify in any public hearing held in Southern California. Please advise me of the date and place of any such hearing.

Under the existing low power regulations, I, as a private individual, would be permitted to operate a transmitter on the FM band provided that the signal did not extend more than 400 feet from the transmitter. Would it be lawful for me to string a transmitter wire for ten miles between Descanso and Pine Valley, California, along Olde Highway 80, provided that the signal did not extend laterally more than 400 feet from the wire?

The existing broadcast stations object to the proposed rule on the basis of possible interference. There are existing dead spots and interstitial slots between existing frequencies which could be assigned to low power stations such as is proposed, without any real chance of interference. Further, I would suggest that existing technology could be found and applied which would continuously and automatically sense any interference and immediately cut back on the power output of the community based radio station, to avoid interference.

Presently, you can get cross talk among many stations, especially at night when weather and high atmosphere conditions are conducive to such signal propagation. If we have lived with that situation since the inception of radio, why now all of a sudden is "interference" such a big issue as to kill the proposed rule? The opposition of the broadcasters is purely economic. They want to exclude competition for money reasons, not technical reasons.

As you are no doubt aware, any Internet user can both receive and broadcast radio (and TV) signals over the Internet, world wide, without a license from FCC. This being the case, this makes radio and TV less of a monopoly than previously. The FCC has the unfortunate task of preserving and fostering the monopolies of the existing and future broadcasters by selling off bandwidth. Apart from the lack of intellectual content of most radio and TV broadcasts, the FCC has, by act of Congress, stifled millions of minds since the inception of FCC regulation. The Internet broadcasts have opened up a new means of bringing quality entertainment, political discourse and freedom of speech and religion to their rightful places in society. FCC, by act of Congress and by its own rule making, has suppressed freedom of

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speech by relegating the use of the available frequencies (dead spots and interstitial frequencies) to a no-man's land. At the very minimum, the FCC should make this no-man's land available to local users, regardless of whether they are schools, churches, NPO's or private enterprise. Why should schools, churches and NPO's enjoy this slice of freedom of speech, and not private individuals? It makes no sense to so limit the use of the no-man's land frequencies.

I urge you to expand the scope of the proposed new rule to include all persons and organizations so they can operate low power radio and TV stations in the no-man's lands areas. If the technology I suggest exists or should exist, can be brought to bear on the interference issue, then FCC should not hesitate to adopt the expanded availability of low power radio and TV station licenses.

Qualcomm's CMDA technology, or other similar technology should be applied to all frequencies of radio and TV broadcast. If there is any technology which could expand the number of radio and TV stations, it would be CMDA or its clones. Has FCC considered that CMDA could increase the number of frequencies a hundredfold? Has FCC considered what the extreme expansion of the number of licenses would do in the area of freedom of speech? Is there any research being done in this area which could be used in radio and TV broadcast fields?

If you are ever in San Diego, I would like to meet you.

Sincerely,



James E. Miller
Attorney at Law

cc: Senator Diane Feinstein; Congressman Duncan Hunter; Jay Harn, Editor, Alpine Sun

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Kennard

FCC chairman often at odds with Congress

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director of Bell Atlantic, Price says the agency has moved too cautiously.

"On some of the regulatory issues, they've got to let the marketplace rip a little bit and let these things roll," Price says. "They have not been able to do it yet."

Nonetheless, some of the Bells have adapted to Kennard's style and agenda. When Bell Atlantic officials recently sought regulatory relief on an obscure telephone issue, they sent an all-black lobbying team. Kennard recalls the episode with humor and says the company ultimately got what it had sought — but on the merits.

And earlier this year GTE announced that it would join with Georgetown Partners — a private investment firm headed by a black executive, Chester Davenport, who has had no telecommunications experience — for a \$3.3 billion purchase of about half of Ameritech's wireless telephone business.

Because Ameritech has sought the FCC's permission to be acquired by SBC Communications, and GTE has sought approval to be acquired by Bell Atlantic, executives close to the wireless deal say the parties brought in Davenport's firm in part to try to curry favor with Kennard.

Broadcasters, another powerful lobby, have also found themselves at odds with Kennard. They say he all but declared war on them recently by proposing a rule that would enable thousands of churches, schools and community groups around the nation to operate low-power FM radio stations.

The broadcasters see the stations as a source of signal interference. Kennard says the rule would provide a new voice to the traditionally voiceless.

More often than not, the federal courts have ruled in Kennard's favor on big regulatory issues — most notably when the Supreme Court recently affirmed the agency's authority to implement some core provisions of the Telecommunications Act.

The courts have also handed setbacks to Kennard and the Clinton administration on the FCC's affirmative-action agenda.

impression.

"It was an event in my household when an African-American appeared on a show," Kennard recalls. "People would run out of the bedroom in excitement at those fleeting moments of images of black people on television. When Bank of America featured a black teller in one of its commercials, my mother was so excited that she changed the family bank account."

At Stanford University, where he studied communications, Kennard spent many hours producing a show called "Black Perspectives" for the college radio station.

During an internship at a NBC television affiliate — he wanted to become an investigative reporter — Kennard was advised by the station manager to go to law school. He wound up at Yale and worked briefly after receiving his law degree at the National Association of Broadcasters, specializing in First Amendment issues.

He then settled in as an associate at the Washington law firm of Verner, Lipfert, Bernhard, McPherson & Hand, specializing in telecommunications deals. Among his clients were NBC and a number of minority broadcasters, including Robert L. Johnson, the chairman and founder of Black Entertainment Television, the cable network; Johnson remains a close friend and adviser.

Kennard also nurtured friendships with two of the most important black lawyers then in Washington: Ronald Brown, whose photograph is now on Kennard's office credenza, and Jordan, whose stepdaughter he had befriended at Yale.

During the 1992 campaign, Kennard was part of the network of Yale Law graduates that helped get Clinton elected president. Backed by Brown, the Democratic National Committee chairman who became commerce secretary, and Jordan, the co-chairman of the Clinton transition team, he was offered the job of general counsel at the FCC.

By all accounts, he and Hundt, then the chairman, worked well together, though their personalities could hardly be more different. Hundt quickly made enemies in Congress with his confrontational style. Kennard, by contrast, was never seen flashing a temper or raising his voice.

As general counsel, Kennard reversed the agency's mediocre court record, compiling an impressive victory rate of about 85 percent in the appeals courts.



The chairman Bill Kennard learning to use his office as a bully pulpit when the courts run against him and the FCC

up, and in this low voice he would say, 'You can be chairman, but wait.' Even before the question could be posed, Kennard volunteered that Jordan, one of Washington's most influential lawyer-lobbyists, "never has asked me for anything."

"He gives me advice because he's been a good friend and because he wants to help me out," Kennard says.

Little more than a year before Kennard's confirmation as chairman, Congress passed the Telecommunications Act, the first major overhaul of federal communications since the FCC was created in 1934.

The law was hailed by both

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congressional leaders and Clinton as a landmark that would deregulate the telephone and cable industries.

It had many hidden problems, however. It was poorly written, creating ambiguities that prompted the industries that didn't get everything they wanted to file huge lawsuits, slowing its implementation by the FCC.

Moreover, the act left the most difficult rule-making decisions — from the possibility of relaxing television-station ownership rules to assuring universal phone service and money for the e-rate program — to the five unelected commissioners.

While the law has promoted competition and has driven down some prices — notably for long-distance and cellular service — it has not achieved many other objectives, like making cable TV and local phone services truly competitive. Some say that its main effect has been to promote corporate consolidations.

Kennard had barely settled into the chairmanship when he encountered his first maelstrom. Without consulting either Congress or his fellow commissioners, he told reporters that he thought liquor advertising should perhaps be banned from television.

A few weeks later, again without consultation, Kennard announced that the FCC would consider rules requiring radio and television stations to give free time to political candidates, a proposal the president had made in his State of the Union Address a day earlier.

The resulting complaints from both the broadcasting industry and many members of Congress forced him into a hasty retreat — and frittered away what little political capital he might have otherwise enjoyed as a new agency leader.

(Kennard says he has learned several lessons from those setbacks — including to refrain from issuing proposals that are unlikely to succeed. "I've learned to be much more guarded," he says. "Musing is not allowed.")

The two announcements poisoned whatever relationship Kennard could have hoped to establish with many key lawmakers.

The venom was evident in March, when Rep. John Dingell of Michigan, the ranking Democrat on the House Commerce Committee, delivered a scathing public attack. "In terms of substance, the current chairman may be a few affiliates short of a network," he told the National Association of Broadcasters.

At an oversight hearing a few weeks later, Kennard tried, with little success, to parry Dingell's thrusts as lobbyists watched with the glee of ancient Romans at a gladiator match.

Dingell called Kennard inept and ignorant. Republican members of the committee sat silently, grinning. The Democrats sat mostly silent.

Where were Kennard's allies? Shortly before the hearing, Kennard had dined with Johnson of Black Entertainment Television, who had offered to ask lawmakers to persuade Dingell to tone down his criticisms. Clearly, the effort didn't work.

If anything could win Kennard some breathing room, it would be the FCC's finally permitting the Bells to enter the long-distance business. He and other commissioners have hinted that they may relent later this year, particularly if state regulators concluded that some local markets are becoming more competitive.

Kennard is also learning to use his office as a bully pulpit when the courts rule against him. In light of his court defeat on affirmative action, he has persuaded the networks to voluntarily keep minority hiring a goal of their recruitment efforts.